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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) VIXS 008	
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	First Named Inventor Indra Laksono		
	Art Unit 2623		Examiner Brown, Rueben M.
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. I am the <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>38,620</u> </div> <div style="width: 45%; text-align: right;"> <u>/Kevin L. Smith/</u> Signature Kevin L. Smith, Reg. No. 38620 Typed or printed name <u>972-772-8836</u> Telephone number <u>December 13, 2007</u> Date </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </div> <div style="width: 45%;"></div> </div>			
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DOCKET NO. VIXS 008
Customer No. 34,280

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of: Indra Laksono
Serial No. 09/864,476
Filed: May 24, 2001
For: Method and apparatus for managing
resources in a multimedia system
Group No.: 2623
Examiner: Brown, Rueben M.

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ARGUMENT ACCOMPANYING THE
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Submitted with the Pre-Appeal Brief Request for Review are these arguments and remarks, which are being filed with the filing of a notice of appeal, accompanied by the appropriate fee, and before the filing of an appeal brief.

A final office action had been mailed September 13, 2007, advising, in sum, that Independent Claims 1, 12, and 30 of the instant patent application stand rejected under 35 USC § 103(a) by U.S. Patent No. 6,067,440, to Diefes (“Diefes”), in view of U.S. Patent No. 5,561,456, to Yu (“Yu”), and U.S. Patent No. 6,594,826, to Rao (“Rao”). Further, Independent Claim 19 stands rejected under 35 USC § 103(a) by Diefes, in view of Yu and Rao, and further in view of U.S. Patent No. 6,163,726 to Goode (“Goode”). (see Final Office Action mailed September 13, 2007 [hereinafter Final Office Action]). For purposes of brevity, Applicant refers to those references cited in the rejection to its base claims, and further, uses its Independent Claim 1 for purposes of the discussion herein.

Applicant respectfully submits that a *prima facie* basis of obvious under the cited references has not been established to reject its claims presented in the instant Application, and Applicant requests reconsideration of its claims.

1. Rejection under Section 103

In general, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Although the Supreme Court, in re-confirming the *Graham* factors, had admonished the use of the teaching-suggestion-motivation (TSM) test as an end of the obviousness inquiry, "[the Court] also recognized that [the teaching-suggestion-motivation (TSM) rationale] was one of a number of valid rationales that could be used to determine obviousness." MPEP § 2143 at 2100-118 (Rev. 6, Sept. 2007). Under this rationale, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Also, a finding is to be articulated that there was a reasonable expectation of success. MPEP § 2143 (G) at page 2100-138 (Rev. 6, Sept. 2007).

Further, all claim limitations must be considered. That is, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP § 2143.03 at page 2100-142 (Rev. 6, Sept. 2007) (citations omitted).

Applicant's Independent Claim 1 recites, *inter alia*, a "method for *managing resources in a multimedia system*, the method comprises: receiving a client request *for a multimedia system service* from one of a plurality of clients; . . . when the client request is valid for the one of the plurality of clients, determining whether the multimedia system *has sufficient resources of a plurality of resources to fulfill the client request*; and allocating at least some of the sufficient resources to fulfill the client request based on a multimedia system resource allocation procedure that are determined *based on a priority associated with the multimedia system service*." (emphasis added).

Generally, there is no suggestion or motivation stemming from the cited references, nor have all of Applicant's claim limitations been considered. For example, as explained in Applicant's Specification, the "if the data being mixed includes *real time audio and/or video data*, such data may take priority over

non-real time video and/or audio. Such real time video and/or audio include telephone communications, watching live broadcasts, et cetera while non-real time video and/or audio include viewing a DVD, VCR, listening to digital audio, CD, DVD audio, et cetera. The non-real time data may be transmitted in large bursts with greater time intervals between the bursts and still provide a continuous flow of display data. Conversely, real time data is transmitted in smaller bursts and more frequently.” (Specification at page 58, *ll.* 20-23, to page 59, *ll.* 1-7). In this regard, the “multimedia server determines whether the client request has priority over currently serviced other client request. If so, . . . the multimedia server preempts currently serviced client(s) to obtain the resources to fill the present client request. If the current client request does not have priority over at least one other currently serviced client, the present client’s request is denied, and the client may be requested to access an alternative multimedia service.” (Specification at page 193, *ll.* 7-16).

a. Motivation and/or suggestion must be generally based on “no knowledge of the claimed invention”

The obviousness rejections were tendered on improper motivational bases such as the proposed combinations stem from analogous art, and/or the proposed combinations relate to widely used video-on-demand technologies and then improperly generalizing the specific limitations recited in Applicant’s claims. (*see, e.g.*, Final Office Action at page 3 (“It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify [the cable services security system of] Diefes with the technology of detecting a streams transmission capability, for the *desirable improvement* of more efficiently controlling the distribution system, according to the teachings of [the video-on-demand scheduler of] Yu.”)). Without further rationale, it appears that loose corollaries were identified from the cited references, and the motivation to combine these loose corollaries was then improperly based upon Applicant’s claimed invention.

Applicant respectfully submits that any motivation or suggestion for the hypothetical combination of the cited references stem from Applicant’s own disclosure and not from the cited references. Further, Applicant respectfully submits that not all of its claim limitations were considered, and moreover, that the cited references do not include all of the claim limitations.

The Federal Circuit has noted that “rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. . . . To prevent the use of hindsight based on the invention to defeat patentability of the invention, [the Federal Circuit]

requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner *must show reasons that the skilled artisan*, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” *In re Rouffett*, 149 F.3d 1350, 1357, (Fed. Cir. 1998); *In re Translogic Technology, Inc.*, 2007 U.S. App. LEXIS 23969 (Fed. Cir. Oct. 12, 2007) (citing *In re Rouffett*).

b. the cable services security system of Diefes is directed towards channel access, does not teach or suggest all the claim limitations of Applicant’s base claims

Diefes relates to “detecting the reception of cable channels and determining whether the reception of such channels is authorized.” (Diefes 1:38-41). That is, Diefes is a channel access system. Diefes does not recite preempting services in process when the priority of the requested service is higher than the priority of the current service.

c. the video-on-demand scheduler of Yao imposes resource delays to maximize viewing profit, not to allocate resources to fulfill the request

Yao relates to a “video request scheduler and admission control explicitly exploiting viewer delay tolerance to facilitate batching to maximize the return of the [video-on-demand] system.” (Yao 1:52-55). In other words, Yao recites a video request scheduler that “[delays] the scheduling of a hot (frequently requested) video for as long as possible within the viewer’s tolerance time. This is based on the probability that during the additional delay, some other requests for the same video will arrive.” (Yao 2:25-30). That is, Yao imposes a delay to all requests to maximize its profit, not for determining whether its system has sufficient resources of a plurality of resources to fulfill the client requests. Further Yao recites that “if a loss of viewers is inevitable due to the heavy load resulting from a long delay, it is better to lose the cold (less frequently requested) video viewers.” (Yao 2:35-39).

d. the subscriber privilege of Rao is not a system resource allocation procedure determined based on a priority associated with the service

Rao relates to digital data distribution “wherein selection from among multiple digital services is accomplished by transmitting a tuning command from a subscriber unit to one or more intermediate interfaces” (Rao 2:39-44). Rao does discuss bumping non-privileged subscribers for privileged subscribers. (Rao 21:35-50; 22:15-33). But Rao refers to “class status” of the user, a not multimedia system resource allocation procedure that are determined based on a priority associated with the multimedia system service.

e. the PIN management system of Goode, like Diefes, is simply a device access system.

Goode relates to a “method and apparatus for managing personal identification numbers within [a video-on-demand] system.” (Goode 1:11-13). As understood, Goode was cited for Applicant’s claim limitation including “based on control limits by a user of the multimedia system.” (See Independent Claim 19). In Goode, upon “a customer requesting access to the information distribution system, the access authorization routine is executed upon the interactive session manager. . . . [R]equests for services outside of the pre-defined level of services will require a different valid PIN to be entered. As such, children can be restricted to certain content levels such as restrictions based upon the MPAA rating for certain types of movies, restrictions as to adult content, restrictions to viewing at only certain times of day, and the like.” (Goode 2:24-63). Goode does not refer to a multimedia system resource allocation procedure that are determined based on a priority associated with the multimedia system service

2. Conclusion

As a result of the foregoing, the Applicant respectfully submits that Claims 1-37 in the Application are in condition for allowance, and respectfully requests allowance of such Claims.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Garlick Harrison & Markison Deposit Account No. 50-2126.

Respectfully submitted,

Date: December 13, 2007

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